

NOTE: WE NEED A CLEAR STATEMENT IN
BOTH AGREEMENTS THAT 'PRODUCTS' MEAN CIGARETTES!

B. Grantors desire to grant and convey to Manufacturer exclusive rights to manufacture for Grantors (and their affiliates and all other entities controlled by or under common control with either of Grantors, collectively, together with the Grantors, the "Affiliated Group") any and all private label brand cigarettes in the United States for the term of this Agreement, and Manufacturer desires to acquire such exclusive manufacturing rights, on the terms and conditions contained in this Agreement.

NOTE:
AGREEMENT IS
PROVOCATED ON
SAM'S CLUB
'EXCLUSIVE'
COMMITMENT.
EXISTING FUND'S
COUPLED WITH
NO OUTSIDE
VOLUME MARKET
INCENTIVE
WILL PRECLUDE
SAM'S COMMITMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and the benefits inuring to the parties hereto, the parties hereto agree as follows:

ARTICLE I EXCLUSIVE MANUFACTURING RIGHTS

Section 1.1 Grant of Exclusive Manufacturing Rights. Subject to the terms and provisions of Section 2.1(b), Grantors, for themselves and on behalf of each other member of the Affiliated Group, do hereby grant, sell, convey, transfer, assign and deliver to Manufacturer, and its successors and assigns, free and clear of all liens, charges, claims, encumbrances or

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rights or interests of third parties of any nature and description whatsoever, exclusive rights to manufacture all and any private label brand cigarettes, including private label cigarettes bearing the Trademarks or any other trademarks or trade names owned, used or licensed now or hereafter by Grantors or any other member of the Affiliated Group ("Private Label Products") for a period commencing on and as of the date hereof and continuing until the termination of this Agreement in accordance with its terms.

Section 1.2 Manufacturer's Annual Fee. (a)

Manufacturer agrees to pay to M&C, or such other member of the Affiliated Group designated by M&C, a fee during the Initial Term (as defined in Section 4.1) and on the dates provided in Section 1.3, subject to adjustment as provided in the Agreement ("Manufacturer's Annual Fee").

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(b) Manufacturer's Annual Fee shall be an amount, as determined on the date payment thereof is due as provided herein, equal to the product of (1) the Annual Base Amount (as defined below), and (2) a fraction, the numerator of which is the number of Private Label Products being manufactured by Manufacturer for any member of the Affiliated Group on the date of determination ("Manufacturer's Products")

to
be
modified
How?

THIS NEEDS TO
BE A SIMPLE
PRO RATA
D/P PENALTY

and the denominator of which is the sum of (1) Manufacturer's Products and (2) the total number of cigarette products manufactured pursuant to Section 2.1(b) or agreed to be manufactured for any member of the Affiliated Group by other manufacturers at any time during the term of this Agreement through the date of determination.

NEEDS TO
5.5 MILLION
TO COVER
SAM'S AND
OTHER
CUSTOMERS

(c) The "Annual Base Amount" shall be (i) \$4,000,000 for each of the first, second and third years of this Agreement, and, (ii) subject to adjustment on the third anniversary date of this Agreement pursuant to Section 1.4 hereof, \$2,000,000 for each of the fourth and fifth years of this Agreement.

*This is
BRAND NEW
AND DEFINTS THE PURPOSE OF
THE 5 YR. DEAL.*

(d) Manufacturer's obligation to pay
Manufacturer's Annual Fee shall automatically terminate *SHOULD BE
A FEAT
5.5 million
for 5 yrs.
COVERING
SAM'S*
upon any termination of this Agreement prior to the expiration of the Initial Term, including, but not limited to, any termination of this Agreement pursuant to Section 4.2. No Manufacturer's Annual Fee shall be paid or payable other than on the dates provided in Section 1.3 and no Manufacturer's Annual Fee shall accrue, be paid or payable during or in respect of any Renewal Period (as defined in Section 4.1 hereof), any period during or in respect of which this Agreement may

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(b) Grantors shall repay to Manufacturer the entire first payment of Manufacturer's Annual Fee paid under paragraph (a)(i) above, if Manufacturer elects to terminate this Agreement pursuant to Section 4.2 on or prior to the first anniversary date of this Agreement or if Manufacturer's Annual Fee, determined for this purpose as of the first anniversary date of this Agreement, would be less than the Annual Base Amount.

No Good
~~~~~  
ONLY PORTION  
NOT "EARNED"  
PRO RATED!  
A) NOT FAIR  
B) CONTRACT  
EXPOSURE  
WITH  
GOVERNMENT.

#### Section 1.4 Review of Manufacturer's Annual Fee.

At any time on or after the 120th day but not later than the 90th day prior to the third anniversary date of this Agreement, Grantors shall be entitled to give Manufacturer a notice (a "Renegotiation Notice") of its desire to enter into negotiations regarding the amount of the Annual Base Amount. Upon the delivery of the Renegotiation Notice to Manufacturer, Manufacturer and Grantors shall negotiate in good faith, for a period ending on the forty-fifth (45th) day prior to the third anniversary date of this Agreement (the "Renegotiation Period"), each of such parties' position regarding the appropriate amount of the Annual Base Amount with a view to reaching agreement as to a new Annual Base Amount. If Manufacturer and Grantors shall agree on a new Annual Base Amount, the Annual Base Amount, as defined in Section 1.2(c) hereof, shall be adjusted to such new

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# MANUFACTURING AGREEMENT

Agreement shall be of a quality at least comparable to the quality of private label cigarettes manufactured by Manufacturer for other customers of Manufacturer.

AND EQUAL OR  
SUPERIOR TO QUALITY  
OF COMPETING PRODUCTS

(c) Manufacturer owns, and during the term of <sup>OF OTHER  
MANUFACTURERS</sup> this Agreement Manufacturer (or an affiliate of Manufacturer) shall own, all rights, title and interests in and to the Trademarks for use in connection with the manufacture and sale of cigarette products, free and clear of all liens, claims, encumbrances and rights of third persons of any nature or description whatsoever, except for any of the foregoing liens, claims, or encumbrances which will not interfere unreasonably with the ability of Manufacturer to sell Products to Customer under this Agreement.

Section 2.2 Representations and Warranties of Customer. Customer hereby represents and warrants to Manufacturer as follows:

(a) Customer has the requisite corporate power and authority to enter into this Agreement, and to perform its obligations hereunder. The execution and performance of this Agreement by Customer has been duly authorized by all necessary corporate action on the part of Customer and will not contravene or violate any

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a geographical basis (national, regional, or local) to any member of the Affiliated Group which is engaged in selling as a retailer, in whole or in part, and shall also include any private label brand cigarettes for which any member of the Affiliated Group engaged in the business of selling cigarettes exclusively at wholesale becomes the supplier to two or more competing retail customers.

NO GOOD -

LANGUAGE MUST EXEMPT ALL  
PRV. LABEL PRODUCT HANDLED AS A  
RETAILER ACCOMODATION WITHOUT EXCEPTION.

e.g., RYR, AMER. LIGGETT

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MIKE:

This would be a good  
page to define priv. label "products" as cigarettes!

## ARTICLE II

### MANUFACTURE AND SALE OF PRIVATE LABEL PRODUCTS

2.1 Manufacturing Agreement. (a) Grantors and Manufacturer shall enter into a manufacturing and sales agreement, substantially in the form and on the terms set forth in Exhibit B hereto with respect to Private Label Products bearing the Trademarks.

(b) Manufacturer shall have the option to enter into a manufacturing and sales agreement, substantially in the form of Exhibit B hereto (including, without limitation, Section 1.2 of said Exhibit B), with respect to each Private Label Product (other than Private Label Products bearing the Trademarks) now or hereafter during the term of this Agreement sold by, through or on behalf of any member of the Affiliated Group ("Other Private Label Products"). Manufacturer's option with respect to other Private Label Products shall be exercisable for a period of 90 days following the detailed presentation to Manufacturer by the Affiliated Group of the requirements (including package and product configuration requirements) for such Other Private Label Product. In the event that Manufacturer's option with respect to Other Private Label Products shall expire without having been exercised by Manufacturer, then the Affiliated

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EXPORT

CAN WE

INCLUDE

MEXICO

(AND)

CANADA)

AND

MAKE AVAILABLE

ANOTHER

PRODUCT

FOR

EXPORT

Z

in and to the Trademarks for use in connection with the manufacture and sale of cigarette products for sale and distribution in the United States, free and clear of all liens, claims, encumbrances and rights of third persons of any nature or description whatsoever, except for any of the foregoing liens, claims, or encumbrances which will not interfere unreasonably with the ability of Manufacturer to sell Private Label Products bearing the Trademarks to Grantors under any manufacturing and sales agreement entered into pursuant to Section 2.1 of this Agreement.

Section 3.2 Representations and Warranties of the Grantors. Each Grantor, for itself and on behalf of each other member of the Affiliated Group, hereby represents and warrants to Manufacturer as follows:

(a) Grantors have the requisite corporate power and authority to enter into this Agreement, and to perform their obligations hereunder. The execution and performance of this Agreement by Grantors has been duly authorized by all necessary corporate action on the part of such parties and the other members of the Affiliated Group and will not contravene or violate any agreements to which either Grantor or any other member of the Affiliated Group, as the case may be, is a party. This

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Section 4.2 Termination Rights. Manufacturer shall have the right to terminate this Agreement following the breach by Grantors or any other member of the Affiliated Group of any term of this Agreement or of any manufacturing and sales agreement entered into pursuant to Section 2.1, or following the occurrence of any of the following events:

- (a) if any trademark or trade name relating to Private Label Products that are manufactured by Manufacturer, is, directly or indirectly, sold, transferred or assigned by any member of the Affiliated Group to any person not a party to this Agreement; *EXCEPTION:  
Sub Job To  
Fulfill Retail  
Contracts  
e.g FRANCHISSEE  
such as  
7/11  
ARCO etc.*
- (b) if the Affiliated Group, for any reason, shall cease, or shall have made any determination to cease, to be actively engaged in the business of marketing and selling Private Label Products; or
- (c) if the Affiliated Group shall select another manufacturer with respect to any Private Label Product pursuant to Section 2.1(b).

Section 4.3 Right of First Refusal. Grantors hereby grant to Manufacturer a right of first refusal to manufacture the Affiliated Group's requirements for

Affiliated Group shall desire to enter into a Competing Offer, then Grantors shall give Manufacturer a notice (the "Further Refusal Notice") setting forth the terms and conditions for the Affiliated Group's purchase of the Private Label Products under the Competing Offer, and containing an offer (the "Further Offer") by Grantors to Manufacturer to enter into an agreement, arrangement or understanding with Manufacturer based on the same terms and conditions for the Affiliated Group's purchase of Private Label Products and for a term equal to the proposed term of the Competing Offer.

Manufacturer shall have the right to accept such Further Offer at any time on or before the thirtieth (30th) day after delivery to Manufacturer of the Further Offer by giving notice of its acceptance of the Further Offer to Grantors. If Manufacturer does not accept the Further Offer as aforesaid, then Grantors may enter into the Competing Offer provided that the relevant terms thereof are no less favorable to Grantors than those set forth in the Further Refusal Notice.

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MIKE:  
CAN'T WE

ESTABLISH A

Section 4.4 Trademark Purchase Option. For a ~~VALUE~~ ~~AND AVOID~~ period of thirty (30) days following the termination of ~~THIS~~ ~~CUMBERSOME~~ ~~Razzle Dazzle,~~ this Agreement at the end of the Initial Term, any Renewal Term or on any Extended Expiration Date (such termination dates referred to as the "Termination

Section 4.5 Survival. The representations and warranties of Grantors and Manufacturer made under this Agreement shall survive the termination of this Agreement. [The provisions of Sections 4.3 and 4.4 and of Article V shall survive the termination of this Agreement as contemplated therein.] *WHY?* *Explain*

## ARTICLE V GENERAL PROVISIONS

Section 5.1 Relationship of Parties. The relationship of the parties is that of independent contractors. Neither party shall in furtherance of this Agreement represent or hold itself out as agent, legal representative, joint venturer, partner, employee or servant of the other. Nothing contained in this Agreement is intended to create, nor should be construed as creating, an association of agent and principal, partners, or joint venturers between the parties, or their affiliates, employees and agents.

Section 5.2 Confidentiality. The parties agree to keep strictly confidential, and not disclose to third parties, any information, either oral or written, concerning the terms of this Agreement and the transactions contemplated herein. Disclosure may be

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